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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991228352-0229-04; I.D. 080800A]

RIN 0648-A044

Fisheries of the Exclusive Economic Zone Off Alaska; Closure of
Critical Habitat Pursuant to a Court Order

AGENCY: National Marine Fisheries Service (NMFS), National
Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim rule.

SUMMARY: NMFS issues interim regulations to close waters within
critical habitat in the exclusive economic zone off Alaska west
of 144°W. long. to all commercial groundfish fishing with trawl
gear. This action is necessary to comply with a United States
District Court Order.

DATES: Effective 11:00 am A.l.t., [insert date of filing for
public inspection by the Office of the Federal Register].

FOR FURTHER INFORMATION CONTACT: John Lepore, 907-586-7228 or
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SUPPLEMENTARY INFORMATION: NMFS manages the U.S. groundfish
fisheries in the exclusive economic zone (EEZ) of the Bering Sea
and Aleutian Islands Management Area (BSAI) and Gulf of Alaska
(GOA) under the fishery management plans (FMPs) for groundfish in

the respective areas. The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 et seq. Regulations implementing the FMPs appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR 600.

NMFS also has statutory authority to promulgate regulations to enforce provisions of the Endangered Species Act (ESA), 16 U.S.C. 1531 et seq. The ESA requires that each Federal agency shall ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of critical habitat of such species.

On July 19, 2000, the United States District Court for the Western District of Washington issued an order that granted a motion for a partial injunction of the North Pacific groundfish fisheries. Greenpeace et al. v. NMFS, No. C98-4922 (W.D. Wash.). This motion, filed by Greenpeace, American Oceans Campaign, and the Sierra Club (hereafter the Plaintiffs), requested injunctive relief until NMFS issues a legally adequate biological opinion addressing the combined, overall effects of the North Pacific groundfish fisheries on Steller sea lions and their critical

habitat pursuant to the ESA. The population of Steller sea lions west of 144°W. long. (hereafter western population) is listed under the ESA as endangered, while the population of Steller sea lions east of 144°W. long. is listed as threatened.

This rule, promulgated under the authority of Section 11(f) of the ESA and in compliance with the Court's injunction, prohibits all groundfish trawl fishing, as the term fishing is defined at 16 U.S.C. 1802(15) and authorized pursuant to the Fishery Management Plans for the Bering Sea/Aleutian Islands and Gulf of Alaska, within Steller sea lion critical habitat listed in Tables 1 and 2 to 50 CFR 226.202 that is in federally regulated waters west of 144°W. long., as well as the three special aquatic foraging areas defined at 50 CFR 226.202. For the convenience of the affected public, all areas closed to groundfish trawling pursuant to the court order are described below. Please refer to regulations at 50 CFR § 226.202 and § 223.202 for further details concerning designated critical habitat and threatened marine and anadromous species.

Steller Sea Lion Critical Habitat Sites Closed:

Site	Latitude	Longitude	Latitude	Longitude
Western Aleutian Rookeries:				
Agattu I.				
--Cape Sabak \1\	52 23.5N	173 43.5E	52 22.0N	173 41.0E
--Gillon Point \1\	52 24.0N	173 21.5E		

Attu I. \1\	52 54.5N	172 28.5E	52 57.5N	172 31.5E
Buldir I. \1\	52 20.5N	175 57.0E	52 23.5N	172 51.0E
Western Aleutian Haulouts:				
Alaid I. \1\	52 45.0N	173 56.5E	52 46.5N	173 51.5E
Attu/Chirikof Pt. \1\	52 30.0N	173 26.7E		
Shemya I. \1\	52 44.0N	174 09.0E		

Site	Latitude	Longitude	Latitude	Longitude
Central Aleutians Rookeries:				
Adak I. \1\	51 36.5N	176 59.0W	51 38.0N	176 59.5W
Agligadak I. \1\	52 06.5N	172 54.0W		
Amchitka I. \1\				
--Column Rock \1\	51 32.5N	178 49.5E		
--East Cape \1\	51 22.5N	179 28.0E	51 21.5N	179 25.0E
Ayugadak I. \1\	51 45.5N	178 24.5E		
Gramp Rock \1\	51 29.0N	178 20.5W		
Kasatochi I. \1\	52 10.0N	175 31.5W	52 10.5N	175 29.0W
Kiska I				
--Lief Cove \1\	51 57.5N	177 21.0E	51 56.5N	177 20.0E
--Cape St. Stephen \1\	51 52.5N	177 13.0E	51 53.5N	177 12.0E
Seguam I./Saddleridge \1\	52 21.0N	172 35.0W	52 21.0N	172 33.0W
Semisopchnoi I.				
--Pochnoi Pt. \1\	51 58.5N	179 45.5E	51 57.0N	179 46.0E
--Petrel Pt.	52 01.5N	179 37.5E	52 01.5E	179 39.0E
Tag I. \1\	51 33.5N	178 34.5W		

Ulak I. \1\	51 20.0N	178 57.0W	51 18.5N	178 59.5W
Yunaska I. \1\	52 42.0N	170 38.5W	52 41.0N	170 34.5W
Central Aleutians Haulouts:				
Amatignak I. \1\	51 13.0N	179 08.0E		
Amlia I.				
--East \1\	52 05.0N	172 58.5W	52 06.0N	172 57.0W
--Sviech. Harbor \1\	52 02.0N	173 23.0W		
Amukta I. & Rocks \1\	52 31.5N	171 16.5W	52 26.5N	171 16.5W
Anagaksik I. \1\	51 51.0N	175 53.5W		
Atka I. \1\	52 23.5N	174 17.0W	52 24.5N	174 07.5W
Bobrof I. \1\	51 54.0N	177 27.0W		
Chagulak I. \1\	52 34.0N	171 10.5W		
Chuginadak I. \1\	52 46.5N	169 44.5W	52 46.5N	169 42.0W
Great Sitkin I. \1\	52 06.0N	176 10.5W	52 07.0N	176 08.5W
Kagamil I. \1\	53 02.5N	169 41.0W		
Kanaga I				
--North Cape	51 56.5N	177 09.0W		
--Ship Rock	51 47.0N	177 22.5W		
Kavalga I. \1\	51 34.5N	178 51.5W	51 34.5N	178 49.5W
Kiska I./Sirius Pt. \1\	52 08.5N	177 36.5E		
Kiska I./Sobaka & Vega \1\	51 50.0N	177 20.0E	51 48.5N	177 20.5E
Little Sitkin I.\1\	51 59.5N	178 30.0E		
Little Tanaga \1\	51 50.5N	176 13.0W	51 49.0N	176 13.0W
Sagigik I. \1\	52 00.5N	173 08.0W		
Seguam I.				
--South \1\	52 19.5N	172 18.0W	52 15.0N	172 37.0W

--Finch Pt. \1\	52 23.5N	172 25.5W	52 23.5N	172 24.0W
Segula I. \1\	52 00.0N	178 06.5E	52 03.5N	178 09.0E
Tanaga I. \1\	51 55.0N	177 58.5W	51 55.0N	177 57.0W
Tanadak I. (Amlia) \1\	52 04.5N	172 57.0W		
Tanadak I. (Kiska) \1\	51 57.0N	177 47.0E		
Ugidak I. \1\	51 35.0N	178 30.5W		
Uliaga I. \1\	53 04.0N	169 47.0W	53 05.0N	169 46.0W
Unalga & Dinkum Rocks \1\	51 34.0N	179 04.0W	51 34.5N	179 03.0W

Site	Latitude	Longitude	Latitude	Longitude
Eastern Aleutians Rookeries:				
Adugak I. \1\	52 55.0N	169 10.5W		
Akun I./Billings Head \1\	54 18.0N	165 32.5W	54 18.0N	165 31.5W
Akutan I./Cape Morgan \1\	54 03.5N	166 00.0W	54 05.5N	166 05.0W
Bogoslof I. \1\ \2\	53 56.0N	168 02.0W		
Ogchul I. \1\	53 00.0N	168 24.0W		
Sea Lion Rocks (Amak) \1\	55 28.0N	163 12.0W		
Ugamak I. \1\	54 14.0N	164 48.0W	54 13.0N	164 48.0W
Eastern Aleutians Haulouts:				
Akutan I./Reef-Lava \1\	54 10.5N	166 04.5W	54 07.5N	166 06.5W
Amak I. \1\	55 24.0N	163 07.0W	55 26.0N	163 10.0W
Cape Sedanka & Island \1\	53 50.5N	166 05.0W		
Emerald I. \1\	53 17.5N	167 51.5W		
Old Man Rocks \1\	53 52.0N	166 05.0W		
Polivnoi Rock \1\	53 16.0N	167 58.0W		

Tanginak I. \1\	54 13.0N	165 19.5W		
Tigalda I. \1\	54 08.5N	164 58.5W		
Umnak I./Cape Aslik \1\	53 25.0N	168 24.5W		

Site	Latitude	Longitude	Latitude	Longitude
Bering Sea Rookeries:				
Walrus I. \1\	57 11.0N	169 56.0W		
Bering Sea Haulouts:				
Cape Newenham \1\	58 39.0N	162 10.5W		
Hall I. \1\	60 37.0N	173 00.0W		
Round I. \1\	58 36.0N	159 58.0W		
St. Paul I.				
--Northeast Point \1\	57 15.0N	170 06.5W		
--Sea Lion Rock \1\	57 06.0N	170 17.5W		
St. George I.				
--S Rookery \1\	56 33.5N	169 40.0W		
--Dalnoi Point	56 36.0N	169 46.0W		
St. Lawrence I.				
--S Punuk I. \1\	64 04.0N	168 51.0W		
--SW Cape \1\	63 18.0N	171 26.0W		

Site	Latitude	Longitude	Latitude	Longitude
Western Gulf of Alaska Rookeries:				
Atkins I. \1\	55 03.5N	159 18.5W		
Chernabura I. \1\	54 47.5N	159 31.0W	54 45.5N	159 33.5W

Clubbing Rocks (N) \1\	54 43.0N	162 26.5W		
Clubbing Rocks (S) \1\	54 42.0N	162 26.5W		
Pinnacle Rock \1\	54 46.0N	161 46.0W		
Western Gulf of Alaska Haulouts:				
Bird I. \1\	54 40.5N	163 18.0W		
Castle Rock \1\	55 17.0N	159 30.0W		
Caton I. \1\	54 23.5N	162 25.5W		
Jude I. \1\	55 16.0N	161 06.0W		
Lighthouse Rocks \1\	55 47.5N	157 24.0W		
Nagai I. \1\	54 52.5N	160 14.0W	54 56.0N	160 15.0W
Nagai Rocks \1\	55 50.0N	155 46.0W		
Sea Lion Rocks (Unga) \1\	55 04.5N	160 31.0W		
South Rock \1\	54 18.0N	162 43.5W		
Spitz I. \1\	55 47.0N	158 54.0W		
The Whaleback \1\	55 16.5N	160 06.0W		

Site	Latitude	Longitude	Latitude	Longitude
Central Gulf of Alaska Rookeries:				
Chirikof I. \1\	55 46.5N	155 39.5W	55 46.5N	155 43.0W
Chowiet I. \1\	56 00.5N	156 41.5W	56 00.5N	156 42.0W
Marmot I. \1\	58 14.5N	151 47.5W	58 10.0N	151 51.0W
Outer I. \1\	59 20.5N	150 23.0W	59 21.0N	150 24.5W
Sugarloaf I. \1\	58 53.0N	152 02.0W		
Central Gulf of Alaska Haulouts:				
Cape Barnabas \1\	57 10.0N	152 55.0W	57 07.5N	152 55.0W

Cape Chiniak \1\	57 35.0N	152 09.0W	57 37.5N	152 09.0W
Cape Gull \1\ \2\	58 13.5N	154 09.5W	58 12.5N	154 10.5W
Cape Ikolik \1\ \2\	57 17.0N	154 47.5W		
Cape Kuliak \1\ \2\	58 08.0N	154 12.5W		
Cape Sitkinak \1\	56 32.0N	153 52.0W		
Cape Ugat \1\ \2\	57 52.0N	153 51.0W		
Gore Point \1\	59 12.0N	150 58.0W		
Gull Point \1\	57 21.5N	152 36.5W	57 24.5N	152 39.0W
Latax Rocks \1\	58 42.0N	152 28.5W	58 40.5N	152 30.0W
Long I. \1\	57 45.5N	152 16.0W		
Nagahut Rocks \1\	59 06.0N	151 46.0W		
Puale Bay \1\ \2\	57 41.0N	155 23.0W		
Sea Lion Rocks (Marmot) \1\	58 21.0N	151 48.5W		
Sea Otter I. \1\	58 31.5N	152 13.0W		
Shakun Rock \1\ \2\	58 33.0N	153 41.5W		
Sud I. \1\	58 54.0N	152 12.5W		
Sutwik I. \1\	56 32.0N	157 14.0W	56 32.0N	157 20.0W
Takli I. \1\ \2\	58 03.0N	154 27.5W	58 03.0N	154 30.0W
Two-headed I. \1\	56 54.5N	153 33.0W	56 53.5N	153 35.5W
Ugak I. \1\	57 23.0N	152 15.5W	57 22.0N	152 19.0W
Ushagat I. \1\	58 55.0N	152 22.0W		

Site	Latitude	Longitude	Latitude	Longitude
Eastern Gulf of Alaska Rookeries:				
Seal Rocks \1\	60 10.0N	146 50.0W		

Fish I. \1\	59 53.0N	147 20.5W		
Eastern Gulf of Alaska Haulouts:				
Cape St. Elias \1\	59 48.0N	144 36.0W		
Chiswell Islands \1\	59 36.0N	149 34.0W		
Hook Point \1\	60 20.0N	146 15.5W		
Middleton I. \1\	59 26.5N	146 20.0W		
Perry I. \1\	60 39.5N	147 56.0W		
Point Eleanor \1\	60 35.0N	147 34.0W		
Point Elrington \1\	59 56.0N	148 13.5W		
Seal Rocks \1\	60 10.0N	146 50.0W		
The Needle \1\	60 07.0N	147 37.0W		

\1\ Includes an associated 20 nautical mile aquatic zone.

\2\ Associated 20 nautical mile aquatic zone lies entirely within one of the three special foraging areas.

Critical habitat includes the Shelikof Strait area in the Gulf of Alaska and consists of the area between the Alaska Peninsula and Tugidak, Sitknak, Aiaktilik, Kodiak, Raspberry, Afognak and Shuyak Islands (connected by the shortest lines); bounded on the west by a line connecting Cape Kumlik (56° 38'N/157° 27'W) and the southwestern tip of Tugidak Island (56° 24'N/154° 41'W) and bounded in the east by a line connecting Cape Douglas (58° 51'N/153° 15'W) and the northernmost tip of Shuyak Island (58° 37'N/152° 22'W).

Critical habitat includes the Bogoslof area in the Bering Sea shelf and consists of the area between 170° 00'W and 164°

00'W, south of straight lines connecting 55° 00'N/170° 00'W and 55° 00'N/168° 00'W; 55° 30'N/168° 00'W and 55° 30'N/166° 00'W; 56° 00'N/166° 00'W and 56° 00'N/164° 00'W and north of the Aleutian Islands and straight lines between the islands connecting the following coordinates in the order listed: 52° 49.2'/169° 40.4'W; 52° 49.8'N/169° 06.3'; 53° 23.8'N/167° 50.1'W; 53° 18.7'N/167° 17.2'W; 54° 02.9'N/166° 03.0'W; 54° 07.7'N/165° 40.6'W; 54° 08.9'N/165° 38.8'W; 54° 11.9'N/165° 23.3'W; and 54° 23.9'N/164° 44.0'W.

Critical habitat includes the Segum Pass area and consists of the area between 52° 00'N and 53° 00'N and between 173° 30'W and 172° 30'W.

Research activities conducted by scientific research vessels, as defined 50 CFR 600.10, are exempted from the closure specified in this emergency rule.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to comply with a court order and is authorized by the ESA.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., do not apply to this action.

This emergency rule has been determined to be significant under section 3(f)(1) of E.O. 12866. NMFS estimates that the potential economic losses in closing critical habitat to pollock trawling from June through December 2000 could be as high as \$88 million. Industry has estimated that if the injunction remains in place through the A/B seasons, losses could be as high as \$250 million. This rule has been determined to be major for purposes of the Congressional Review Act, 5 U.S.C. 801, et seq. The delay in effective date normally required for major rules under the Congressional Review Act is inapplicable to this rule closing a commercial fishery pursuant to 5 U.S.C. 808(1).

NMFS finds that there is good cause to waive the requirement to provide prior notice and an opportunity for public comment pursuant to authority set forth at 5 U.S.C. 553(b)(B), as such procedures are unnecessary. This action complies with a United States District Court order and is non-discretionary. Delaying the effectiveness of this interim rule to provide prior notice and opportunity for comment would prevent NMFS from complying with the Court's order, which requires that critical habitat be closed to groundfish trawling by 12:00 noon Pacific time, August 8, 2000. Additionally, pursuant to authority at 5 U.S.C. 553(d)(3), NMFS finds good cause to waive the 30 day delay in effective date and makes this rule effective immediately in order to meet the time and date specified in the court's order.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: August 8, 2000

Andrew Kemmerer
Acting Assistant Administrator for Fisheries
National Marine Fisheries Service

For reasons set out in the preamble, 50 CFR part 679 is
Amended as follows:

PART 679--FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 is revised to
read as follows:

Authority: 16 U.S.C. 773 et seq., 1801 et seq., and
3631 et seq.; Title II of Division C, Pub. L. 105-277; Sec. 3027,
Pub. L. 106-31, 113 Stat. 57; 16 U.S.C. 1540(f).

2. In § 679.22, paragraph (j) is added to read as follows:
§ 679.22 Closures.

* * * * *

(j) Closure of critical habitat. All groundfish trawl
fishing, as the term fishing is defined at 16 U.S.C. 1802(15) and
authorized pursuant to the Fishery Management Plans for the
Bering Sea/Aleutian Islands and Gulf of Alaska, within Steller
sea lion critical habitat within the EEZ and west of 144°W.
long., as such critical habitat is defined by regulations

codified at 50 CFR 226.202 and Tables 1 and 2 of 50 CFR part 226,
is prohibited.